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EXAMINER	
BECKER, DREW E	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/782,007	LUDWIG, WOLFGANG	
	Examiner	Art Unit	
	Drew E. Becker	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 12-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 12-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/5/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Priority

1. The disclosure is objected to because of the following informalities: the first sentence of the specification should include the current status of the parent application (ie abandoned). Also, the correct serial number for the parent is 09/808,398.

Appropriate correction is required.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1 and 12-25 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 (particularly claim 7) of U.S. Patent No. 6,730,341 in view of Ludwig [Pat. No. 5,564,332]. Ludwig '341 does not

recite an agitator. It would have been obvious to one of ordinary skill in the art to incorporate the agitator of Ludwig '332 into the invention of Ludwig '341 since both are directed to methods for processing meat, since Ludwig '341 already included a vessel for contacting the meat with a treating solution (claim 1), and since the agitator equipped vessel of Ludwig '332 (Figure 4, #56-57) was effective for tumbling and mixing the meat and solution (column 4, lines 20-37).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 24 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose a temperature range of "43°F to 60°F". Although, the application appears to disclose maintaining the meat temperature within +/-2°F in original claim 9, it does not appear that claimed temperature range refers to the meat itself as discussed below.

6. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it

pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 25 recites a temperature of "at least 45°F". However, the specification describes only a temperature range of 45-60°F. One would be unlikely to recreate applicant's invention at an elevated temperature of for instance 800°F.

7. Claim13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The application does not appear to disclose a "substantially constant" temperature.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1 and 12-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. Claims 1 and 24-25 recite "at an elevated temperature of 45°F to 60°F". It is not clear what material should be at this temperature. It is not clear whether this temperature range refers to the meat itself, the solution, the air temperature within the chamber, or the temperature of the heat transfer medium.

11. The term "substantially dry" in claims 1 and 24-25 is a relative term which renders the claim indefinite. The term "substantially dry" is not defined by the claim, the

specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what level of dryness would be encompassed by this term. Furthermore, it is not clear if the dryness refers only a surface of the meat, or whether the meat is dehydrated entirely.

12. Claim 12 recites "controlling the temperature of bodies of meat within +/-2°F". It is not clear what temperature range this refers to. It is not clear whether the range is with regard to a constant temperature during agitation, or whether the temperature changes during agitation and one simply maintains the temperature within +/-2°F of a changing temperature schedule.

13. The term "substantially constant" in claim 13 is a relative term which renders the claim indefinite. The term "substantially constant" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear what temperature, or temperature range" is encompassed by the claim. A temperature is either constant, or it is not.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 1 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Horn et al [Pat. No. 6,105,490].

Horn et al teach a method for marinating meat by contacting the meat with a solution during agitation (column 4, lines 47-67), treating shrimp meat at a starting temperature of 60°F and recovering the shrimp at a final temperature of 34-40°F (column 5, lines 20-25), and use of a paddle agitator (column 3, line 65).

16. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by Lankford [Pat. No. 3,718,485].

Lankford teaches a method for dehydrating food by contacting pork meat with a solution during agitation, wherein the solution is at a temperature of 90-150°F, and recovering the meat with a final moisture content of 2% (column 6, lines 27-60; Figure 8).

17. Claims 1, 18-19, and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Halden et al [Pat. No. 5,158,794].

Halden et al teach a method for marinating meat by contacting the meat with a solution during agitation, a tumbling temperature of 3-8°C or 37.4 to 46.4°F, recovering the meat as it is cooled, use of a tumbler (column 2, lines 6-20), and chilling or freezing the meat after tumbling (column 2, lines 55-58).

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

19. Claims 1, 12-14, 19, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halden et al.

Halden et al teach the above concepts as well as injection of marinade prior to tumbling, tempering the meat to a temperature of -3 to +3°C before tumbling, and distributing the marinade within the meat (column 2, lines 6-20). Halden et al do not recite controlling the meat temperature within +/- 2°F or constant, and the injected solution being less than the tumbling temperature or 15-40°F less. It would have been obvious to one of ordinary skill in the art to maintain the meat temperature at a constant level during tumbling in the invention of Halden et al since Halden et al already taught controlling and maintaining the temperature of the meat before tumbling (column 2, line 18), since it has been held that the provision of adjustable ranges, where needed, involves only routine skill in the art. *In re Stevens,* 101 USPQ 284 (CCPA 1954), and since this would have been done in order to prevent the meat from becoming warm during agitation. It would have been obvious to one of ordinary skill in the art to provide the injected solution of Halden et al at a reduced temperature of 15-40°F less than the tumbling temperature since Halden et al already taught injection of solution prior to tumbling (column 2, line 9), a tumbling temperature of 3-8°C or 37.4 to 46.4°F (column 2, line 15), and tempering the meat to a reduced temperature of -3 to +3°C or 26.6-37.4°F prior to

tumbling (column 2, line 16), and since a common means for cooling a product was to inject a cooled liquid into it in order to speed up, or at least not hinder, the overall cooling.

20. Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halden et al as applied above, in view of DE 3119496A and Horn et al [Pat. No. 6,105,490].

Halden et al teach the above mentioned concepts. Halden et al do not recite measuring the meat temperature, adjusting the agitator temperature, and contacting the meat with a temperature sensor which is inserted into the meat. Horn et al teach a method for vacuum tumbling meat with a temperature controlled agitator (abstract) as well as a programmable logic circuit that senses product temperature (column 5, line 65). DE 3119496A teaches a method for measuring a meat temperature by contacting the meat with a temperature sensor which is inserted into the meat (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the temperature controlled agitator of Horn et al into the invention of Halden et al since both are directed to methods of vacuum tumbling meat, since Halden et al simply did not describe the specific structure of vacuum tumbler used (column 2, line 8), since Halden et al already included temperature control during tumbling (column 2, lines 6-20), and since temperature controlled agitator of Horn et al would have provided an effective means for controlling the temperature in the process of Halden et al. It would have been obvious to one of ordinary skill in the art to incorporate the inserted temperature sensor of DE 3119496A into the invention of Halden et al, in view of Horn et al, since all are directed

to methods of processing meat, since Halden et al already included temperature control during agitation (column 2, lines 6-20), since Horn et al already included a temperature sensor but simply did not describe its structure (column 5, line 65), and since the inserted temperature sensor of DE 3119496A provided an accurate means for measuring the core temperature of the meat as well as the surface temperature (abstract).

21. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halden et al as applied above, in view of Horn et al.

Halden et al teach the above mentioned concepts. Halden et al do not recite a temperature controlled jacket. Horn et al teach a method for vacuum tumbling meat with a temperature controlled jacket (abstract) as well as a programmable logic circuit that senses product temperature (column 5, line 65). It would have been obvious to one of ordinary skill in the art to incorporate the temperature controlled jacket of Horn et al into the invention of Halden et al since both are directed to methods of vacuum tumbling meat, since Halden et al simply did not describe the specific structure of vacuum tumbler used (column 2, line 8), since Halden et al already included temperature control during tumbling (column 2, lines 6-20), and since temperature controlled jacket of Horn et al would have provided an effective means for controlling the temperature in the process of Halden et al.

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mauer et al [Pat. No. 5,741,536] teach methods for marinating meat.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794